

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2508**

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**Introduced by Assembly Member Bonilla**

February 24, 2012

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An act to ~~amend Section 1320 of the Streets and Highways Code, relating to county roads; add Chapter 3.7 (commencing with Section 12140) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2508, as amended, Bonilla. ~~County roads; summer bridges. Public contracts; public health agencies.~~

*Existing law requires a state agency to comply with specified procedures in awarding agency contracts.*

*This bill would also prohibit the California Health and Human Services Agency, the executive board of the California Health Benefit Exchange, a department under their purview, or a local government expending funds provided to those agencies, from contracting for services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and a subcontract performed under that contract, will be performed solely with workers employed in California. This bill would authorize these agencies to waive this requirement, with the consent of the Controller, if certain conditions are met. This bill would also require the contract to include a clause for termination for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers outside of California during the life of the contract. This bill would also*

*specify that these provisions do not apply to an existing contract, as provided, or to a contract if the refusal to award that contract would violate the specific terms of federal trade treaties or bilateral or regional free trade agreements, as specified.*

*By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law authorizes a county board of supervisors to construct, operate, manage, or maintain summer bridges, with expenditures for those bridges to be paid out of the county general fund.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares the following:*
- 2     (a) *The federal and state economies are recovering from the*
- 3     *great recession and California still has a high unemployment rate.*
- 4     *Millions of Californians are not working or working less than they*
- 5     *want and need full-time employment. California continues to allow*
- 6     *state public benefit contracts to be awarded to contractors that*
- 7     *perform the work outside the United States.*
- 8     (b) *By contracting and subcontracting outside of the country,*
- 9     *jobs are displaced in the United States and in California, and*
- 10    *taxpayer dollars are used to create jobs in foreign countries. State*
- 11    *tax revenues should be used to create jobs in the United States*
- 12    *and in California, especially when the taxpayer dollars are*
- 13    *designated for programs meant to create jobs and address*
- 14    *problems associated with joblessness.*
- 15    SEC. 2. *Chapter 3.7 (commencing with Section 12140) is added*
- 16    *to Part 2 of Division 2 of the Public Contract Code, to read:*

1        *CHAPTER 3.7. PROHIBITION OF THE OFFSHORING OF STATE*  
2                    *PUBLIC BENEFITS CONTRACTS*

3  
4        12140. (a) *Notwithstanding any other law, the California*  
5        *Health and Human Services Agency, the executive board of the*  
6        *California Health Benefit Exchange, departments under the*  
7        *purview of those agencies, or a local government expending funds*  
8        *provided by those agencies shall not contract for services with a*  
9        *contractor unless that contractor certifies under penalty of perjury*  
10       *in his or her bid for the contract that the contract, and a*  
11       *subcontract performed under that contract, will be performed*  
12       *solely with workers employed in California.*

13       (b) *For purposes of this section, "local government" means a*  
14       *county, city, city and county, including a charter city or county, a*  
15       *special district, or any other local or regional government entity.*

16       (c) *Notwithstanding any other law, state funds for employment*  
17       *training shall not be allocated or expended to train employees*  
18       *located in foreign countries.*

19       (d) *The contract shall provide that in the event a contractor or*  
20       *subcontractor performs the contract or the subcontract with*  
21       *workers outside of California during the life of the contract, the*  
22       *contract shall be terminated for noncompliance and the contractor*  
23       *or subcontractor shall pay a penalty to the state agency or local*  
24       *government in an amount equal to the amount paid by the state*  
25       *agency or local government for the percentage of work that was*  
26       *performed with workers outside of California.*

27       (e) (1) *A state agency or local government may waive the*  
28       *requirements of subdivision (a) for a particular contract, for a*  
29       *period not to exceed one year per waiver, if that state agency or*  
30       *local government submits a written finding to the Controller, and*  
31       *the Controller does not reject that finding within 30 days of receipt,*  
32       *that either of the following are true:*

33       (A) *The contract is necessary to respond to an emergency, as*  
34       *determined by the state agency or local government, for all of the*  
35       *following reasons:*

36       (i) *The ability of the state agency or local government to provide*  
37       *essential services would be adversely affected if the contract is*  
38       *not performed.*

39       (ii) *The public health, safety, and welfare would be endangered*  
40       *if the contract is not performed.*

1     (iii) A contractor or subcontractor that has the ability to perform  
2     the contract solely with workers within California is not  
3     immediately available to perform the contract.

4     (B) The contract is necessary to provide a unique service, as  
5     determined by the state agency or local government, for both of  
6     the following reasons:

7     (i) The state agency or local government deems as mandatory  
8     the particular service to be performed under the contract.

9     (ii) Workers employed in California cannot adequately perform  
10    the unique service to be performed under the contract.

11    (2) A state agency or local government that seeks a waiver under  
12    paragraph (1) shall, at the same time that the entity provides the  
13    written finding to the Controller, provide a copy of that written  
14    finding to the Assembly Committee on Business, Professions, and  
15    Consumer Protection, the Assembly Committee on Budget, the  
16    Senate Committee on Governmental Organization, and the Senate  
17    Committee on Budget and Fiscal Review.

18    (3) If the Controller rejects a written finding while the contract  
19    is being performed or after the contract has been performed, the  
20    contractor or subcontractor shall pay a penalty to the state agency  
21    or local government in an amount equal to the amount paid by the  
22    state agency or local government for the percentage of work that  
23    was performed with workers outside of California.

24    (f) This section shall not apply to a contract if the refusal to  
25    award that contract, on the basis that the contractor or  
26    subcontractor does not certify under penalty of perjury that the  
27    contract and any subcontract performed under that contract will  
28    be performed solely with workers within California, would violate  
29    the specific terms of the Agreement on Government Procurement  
30    of the World Trade Organization or any other bilateral or regional  
31    free trade agreement that California has consented to.

32    (g) This section shall not apply to a contract, or subcontract,  
33    currently in place, if it would result in a violation of the terms of  
34    the contract, but upon expiration of that contract, these provisions  
35    shall be added before a new contract can be executed or renewed.

36    SEC. 3. No reimbursement is required by this act pursuant to  
37    Section 6 of Article XIII B of the California Constitution because  
38    the only costs that may be incurred by a local agency or school  
39    district will be incurred because this act creates a new crime or  
40    infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*  
2 *the Government Code, or changes the definition of a crime within*  
3 *the meaning of Section 6 of Article XIII B of the California*  
4 *Constitution.*

5 SECTION 1. ~~Section 1320 of the Streets and Highways Code~~  
6 ~~is amended to read:~~

7 ~~1320. A board of supervisors may construct, operate, manage,~~  
8 ~~or maintain summer bridges under rules and regulations, and at~~  
9 ~~the times and places, that it considers necessary. The board shall~~  
10 ~~pay for necessary bridge expenditures from the county general~~  
11 ~~fund.~~